UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

JOSEPH BURGESON :

:

v. : CASE NO: 3:06cv1663(WWE)(HBF)

:

DOWNING, et al.

MEMORANDUM OF DECISION

Defendants Faughnan and Vegliante move to dismiss the complaint against them in their official capacities on the ground that they are protected by Eleventh Amendment immunity. For the reasons that follow, the motion will be granted.

When considering a motion to dismiss, the court accepts as true all factual allegations in the complaint and draws inferences from these allegations in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Dismissal is inappropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Davis v. Monroe County Bd. of Educ., 526 U.S. 629, 654 (1999). The court considers only the allegations in the complaint, documents attached to the complaint or matters of which the court may take judicial notice. Samuels v. Air Transport Local 504, 992 F.2d 12, 15 (2d Cir. 1993).

The Eleventh Amendment provides immunity from suit for monetary damages for the state and state officials sued in their

official capacities. <u>Kentucky v. Graham</u>, 473 U.S. 159 (1985).

Although the state can waive this immunity from suit, plaintiff has presented no evidence suggesting that the State of Connecticut has done so in this case. <u>See Edelman v. Jordan</u>, 415 U.S. 651, 673 (1974) (holding that state may explicitly waive Eleventh Amendment immunity).

Defendants Faughnan and Vegliante are Connecticut State
Police Troopers. Thus, they are immune from suit for damages in
their official capacities. Although plaintiff states in
opposition to the motion to dismiss that he seeks damages from
defendants Faughnan and Vegliante in their individual capacities
only, he does not make that distinction in the complaint.

Accordingly, the motion to dismiss [doc. #40] is GRANTED as to all claims for damages against defendants Faughnan and Vegliante their official capacities.

SO ORDERED at Bridgeport, Connecticut this 24th day of April 2008.

/ W /

Warren W. Eginton
Senior United States District Judge